IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1027 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

SMT. PUNIBEN RAMJIBHAI DHAPA & ANR.

Appearance:

MR V.P. NANAVATI for the Appellant

MR M.S. SHAH for Respondents No. 1 & 2

CORAM : MR.JUSTICE N.G.NANDI

and

MR.JUSTICE J.R.VORA

Date of decision: 02/04/2002

ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. This Appeal is taken up today for final disposal on the joint request made by the learned counsel for the appellant Insurance Company Mr. P.V. Nanavati and learned Counsel Mr. Mehul S. Shah, for the claimants respondents No.1 and 2.

2. Heard. Vide order dated 27.7.2001 the Appeal has been admitted and Notice is issued to the respondents. Mr. M.S.Shah, learned Advocate for respondents No.1 and 2 original claimants have waived the service of notice in this Appeal.

3. It is jointly submitted by learned advocates for the parties that in view of the order passed in First Appeal No.2271/01, this appeal does not survive since respondents No. 1 and 2 in this Appeal have withdrawn the Application under Section 163A of the Act, in which the impugned order came to be passed by the Tribunal awarding the amount of Rs. 2,76,500/- to the respondents No. 1 and 2. Since the impugned order does not remain in view of the withdrawal of the application under Section 163A of the Motor Vehicles Act by Appellants No. 1 and 2 i.e. original claimants, in First appeal No. 2271/2001, who are the respondents No. 1 and 2 in this appeal, the present Appeal has become infructuous and is liable to be disposed of as not surviving.

4. The appellant - Insurance Company would be at liberty to approach the Tribunal for the refund of the amount deposited by the Insurance Company before the Tribunal pursuant to the order under section 163A of the Act, which does not remain now, in view of the above. On such application being filed by the Appellant - Insurance Company, the Tribunal will pass appropriate orders.

5. In the result, the Appeal is disposed as as not surviving with no order as to costs.

(N.G. Nandi, J.)

(J.R. Vora, J.)

p.n.nair